

## Donald Phillips

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**From:** Mike Montanye  
**Sent:** Wednesday, October 9, 2019 9:05 AM  
**To:** Donald Phillips  
**Cc:** Shari S. Groccia  
**Subject:** Video request

Please let me know when you are available to a conversation regarding a video request.

Lieutenant Michael Montanye  
Strategic Services  
Greenville Police Department  
252-329-3215 Office  
252-916-3900 Cell

## Donald Phillips

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**From:** Rhonda Wilkerson <Rhonda.Wilkerson@AAM.COGNC.NET>  
**Sent:** Monday, October 14, 2019 11:17 AM  
**To:** Donald Phillips  
**Subject:** Voice Message from Rhonda Wilkerson (4426)  
**Attachments:** Audio\_Recording\_S1-200161\_001\_compand.wav

## Donald Phillips

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**From:** Rhonda Wilkerson  
**Sent:** Monday, October 14, 2019 12:02 PM  
**To:** Donald Phillips  
**Subject:** FW: Voice Message from 2526725476 / "WARD AND SMITH"  
**Attachments:** Audio\_Recording\_S1-200302\_001\_compand.wav

**From:** Avaya Aura Messaging <avayamsg@AAM.COGNC.NET>  
**Sent:** Monday, October 14, 2019 11:58 AM  
**To:** Rhonda Wilkerson <Rhonda.Wilkerson@AAM.COGNC.NET>  
**Subject:** Voice Message from 2526725476 / "WARD AND SMITH"

## Donald Phillips

---

**From:** Donald Phillips  
**Sent:** Monday, October 14, 2019 6:04 PM  
**To:** mark.henriques@wbd-us.com; smg@wardandsmith.com  
**Cc:** Donald Phillips  
**Subject:** Interim ECU Chancellor Dan Gerlach Investigation--PRLR for Custodial LEA Recording(s)  
**Attachments:** N.C.G.S. 132-1.4A.PDF; NCGS 132-1 4A - Request for Disclosure of Recording.pdf; AOC-CV-270 (04.2017).pdf

### **PUBLIC RECORDS REQUEST FOR CUSTODIAL LAW ENFORCEMENT AGENCY RECORDING**

**Name of Requestor:** Mark P. Henriques, Esq.  
Womble Bond Dickinson (US) LLP  
*Attorneys for UNC System*

S. McKinley Gray, III, Esq.  
Ward and Smith, P.A.  
*Attorneys for Dan Gerlach*

**Date of Request:** 10/14/2019  
**Date of Incident:** 09/25/2019  
**GPD Officer(s):** None  
**GPD File No.:** None

Mr. Henriques and Mr. Gray:

I understand that you are interested in viewing City of Greenville, Greenville Police Department ("GPD") traffic/public safety camera recordings from September 25, 2019 regarding an investigation of Interim ECU Chancellor Dan Gerlach.

**Overview of the law regarding law enforcement recordings:** Regarding your request to view the recording(s) at issue, please find attached N.C.G.S. § 132-1.4A, which became effective October 1, 2016. In a nutshell, this law creates very specific procedures for a person who is requesting to either **view** (seek "**disclosure**") or obtain a **copy** (seek "**release**") of any custodial law enforcement agency recording (traffic/public safety camera, body worn camera, dashboard camera, or any other audio or video recording). Requests for "disclosure" of GPD recordings are handled by GPD and the Chief of Police allows or denies "disclosure." A recording can only be "released" by superior court order and only after the person seeking "release" has first "filed" a Petition for Release in superior court.

**If you want to VIEW the GPD recording(s):** I have attached the GPD *Request for Disclosure of Recording Form*. Each of you will need to complete this form to determine your eligibility to view the portions of the requested recordings. Please then contact Lt. Michael Montanye regarding specific questions and scheduling of those recordings that are applicable to your request for disclosure. Here is Lt. Montanye's contact information:

Lieutenant Michael Montanye  
Strategic Services  
Greenville Police Department  
Email: [mmontanye@greenvillenc.gov](mailto:mmontanye@greenvillenc.gov)

Telephone: (252) 329-4835

**If you want to RECEIVE A COPY of the GPD recording(s):** For your convenience, I have attached the *Petition for Release of Custodial Law Enforcement Agency Recording Form* (AOC-CV-270). Please complete this form and file this form with the Pitt County Clerk of Superior Court. You will also need to calendar the matter for hearing with the Clerk of Superior Court and the Superior Court Trial Court Coordinator. You will need to properly give notice to all parties as required by the statute. As the attorney that will be handling the matter for the City, I would respectfully request to be copied as well on all documents you file. **If you decide to file a Petition, please give me a call before you file the Petition so that we can discuss the filing and logistics in greater detail.**

**Please note that I am out of town at a CLE, but will be back in the office on Thursday.** Feel free to call me if you have any questions or would like to discuss. My direct line is (252) 329-4331. If you need to reach me before Thursday, please call my cell (252) 916-9803.

Thank you.

Donald

**Donald K. Phillips**

Assistant City Attorney

P.O. Box 7207

Greenville, NC 27835-7207

Tel: (252) 329-4426

Fax: (252) 329-4626

Email: [dkphillips@greenvillenc.gov](mailto:dkphillips@greenvillenc.gov)

Website: [www.greenvillenc.gov](http://www.greenvillenc.gov)



*Find yourself in good company®*

**§ 132-1.4A. Law enforcement agency recordings.**

(a) Definitions. – The following definitions apply in this section:

- (1) Body-worn camera. – An operational video or digital camera or other electronic device, including a microphone or other mechanism for allowing audio capture, affixed to the uniform or person of law enforcement agency personnel and positioned in a way that allows the camera or device to capture interactions the law enforcement agency personnel has with others.
- (2) Custodial law enforcement agency. – The law enforcement agency that owns or leases or whose personnel operates the equipment that created the recording at the time the recording was made.
- (3) Dashboard camera. – A device or system installed or used in a law enforcement agency vehicle that electronically records images or audio depicting interaction with others by law enforcement agency personnel. This term does not include body-worn cameras.
- (4) Disclose or disclosure. – To make a recording available for viewing or listening to by the person requesting disclosure, at a time and location chosen by the custodial law enforcement agency. This term does not include the release of a recording.
- (5) Personal representative. – A parent, court-appointed guardian, spouse, or attorney of a person whose image or voice is in the recording. If a person whose image or voice is in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person's surviving spouse, parent, or adult child; the deceased person's attorney; or the parent or guardian of a surviving minor child of the deceased.
- (6) Recording. – A visual, audio, or visual and audio recording captured by a body-worn camera, a dashboard camera, or any other video or audio recording device operated by or on behalf of a law enforcement agency or law enforcement agency personnel when carrying out law enforcement responsibilities. This term does not include any video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses.
- (7) Release. – To provide a copy of a recording.

(b) Public Record and Personnel Record Classification. – Recordings are not public records as defined by G.S. 132-1. Recordings are not personnel records as defined in Part 7 of Chapter 126 of the General Statutes, G.S. 160A-168, or G.S. 153A-98.

(c) Disclosure; General. – Recordings in the custody of a law enforcement agency shall be disclosed only as provided by this section. A person requesting disclosure of a recording must make a written request to the head of the custodial law enforcement agency that states the date and approximate time of the activity captured in the recording or otherwise identifies the activity with reasonable particularity sufficient to identify the recording to which the request refers.

The head of the custodial law enforcement agency may only disclose a recording to the following:

- (1) A person whose image or voice is in the recording.
- (2) A personal representative of an adult person whose image or voice is in the recording, if the adult person has consented to the disclosure.
- (3) A personal representative of a minor or of an adult person under lawful guardianship whose image or voice is in the recording.

- (4) A personal representative of a deceased person whose image or voice is in the recording.
- (5) A personal representative of an adult person who is incapacitated and unable to provide consent to disclosure.

When disclosing the recording, the law enforcement agency shall disclose only those portions of the recording that are relevant to the person's request. A person who receives disclosure pursuant to this subsection shall not record or copy the recording.

(d) **Disclosure; Factors for Consideration.** – Upon receipt of the written request for disclosure, as promptly as possible, the custodial law enforcement agency must either disclose the portion of the recording relevant to the person's request or notify the requestor of the custodial law enforcement agency's decision not to disclose the recording to the requestor.

The custodial law enforcement agency may consider any of the following factors in determining if a recording is disclosed:

- (1) If the person requesting disclosure of the recording is a person authorized to receive disclosure pursuant to subsection (c) of this section.
- (2) If the recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- (3) If disclosure would reveal information regarding a person that is of a highly sensitive personal nature.
- (4) If disclosure may harm the reputation or jeopardize the safety of a person.
- (5) If disclosure would create a serious threat to the fair, impartial, and orderly administration of justice.
- (6) If confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.

(e) **Appeal of Disclosure Denial.** – If a law enforcement agency denies disclosure pursuant to subsection (d) of this section, or has failed to provide disclosure more than three business days after the request for disclosure, the person seeking disclosure may apply to the superior court in any county where any portion of the recording was made for a review of the denial of disclosure. The court may conduct an in-camera review of the recording. The court may order the disclosure of the recording only if the court finds that the law enforcement agency abused its discretion in denying the request for disclosure. The court may only order disclosure of those portions of the recording that are relevant to the person's request. A person who receives disclosure pursuant to this subsection shall not record or copy the recording. An order issued pursuant to this subsection may not order the release of the recording.

In any proceeding pursuant to this subsection, the following persons shall be notified and those persons, or their designated representative, shall be given an opportunity to be heard at any proceeding: (i) the head of the custodial law enforcement agency, (ii) any law enforcement agency personnel whose image or voice is in the recording and the head of that person's employing law enforcement agency, and (iii) the District Attorney. Actions brought pursuant to this subsection shall be set down for hearing as soon as practicable, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(f) **Release of Recordings to Certain Persons; Expedited Process.** – Notwithstanding the provisions of subsection (g) of this section, a person authorized to receive disclosure pursuant to subsection (c) of this section, or the custodial law enforcement agency, may petition the superior court in any county where any portion of the recording was made for an order releasing the recording to a person authorized to receive disclosure. There shall be no fee for filing the petition which shall be filed on a form approved by the Administrative Office of the Courts and shall state the date and approximate time of the activity captured in the recording, or otherwise identify the activity with reasonable particularity sufficient to identify the recording. If the petitioner is a person authorized to receive disclosure, notice and an opportunity to be



heard shall be given to the head of the custodial law enforcement agency. Petitions filed pursuant to this subsection shall be set down for hearing as soon as practicable and shall be accorded priority by the court.

The court shall first determine if the person to whom release of the recording is requested is a person authorized to receive disclosure pursuant to subsection (c) of this section. In making this determination, the court may conduct an in-camera review of the recording and may, in its discretion, allow the petitioner to be present to assist in identifying the image or voice in the recording that authorizes disclosure to the person to whom release is requested. If the court determines that the person is not authorized to receive disclosure pursuant to subsection (c) of this section, there shall be no right of appeal and the petitioner may file an action for release pursuant to subsection (g) of this section.

If the court determines that the person to whom release of the recording is requested is a person authorized to receive disclosure pursuant to subsection (c) of this section, the court shall consider the standards set out in subsection (g) of this section and any other standards the court deems relevant in determining whether to order the release of all or a portion of the recording. The court may conduct an in-camera review of the recording. The court shall release only those portions of the recording that are relevant to the person's request and may place any conditions or restrictions on the release of the recording that the court, in its discretion, deems appropriate.

(g) Release of Recordings; General; Court Order Required. – Recordings in the custody of a law enforcement agency shall only be released pursuant to court order. Any custodial law enforcement agency or any person requesting release of a recording may file an action in the superior court in any county where any portion of the recording was made for an order releasing the recording. The request for release must state the date and approximate time of the activity captured in the recording, or otherwise identify the activity with reasonable particularity sufficient to identify the recording to which the action refers. The court may conduct an in-camera review of the recording. In determining whether to order the release of all or a portion of the recording, in addition to any other standards the court deems relevant, the court shall consider the applicability of all of the following standards:

- (1) Release is necessary to advance a compelling public interest.
- (2) The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- (3) The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
- (4) Release would reveal information regarding a person that is of a highly sensitive personal nature.
- (5) Release may harm the reputation or jeopardize the safety of a person.
- (6) Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- (7) Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- (8) There is good cause shown to release all portions of a recording.

The court shall release only those portions of the recording that are relevant to the person's request, and may place any conditions or restrictions on the release of the recording that the court, in its discretion, deems appropriate.

In any proceeding pursuant to this subsection, the following persons shall be notified and those persons, or their designated representative, shall be given an opportunity to be heard at any proceeding: (i) the head of the custodial law enforcement agency, (ii) any law enforcement agency personnel whose image or voice is in the recording and the head of that person's employing law enforcement agency, and (iii) the District Attorney. Actions brought pursuant to



this subsection shall be set down for hearing as soon as practicable, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(h) Release of Recordings; Law Enforcement Purposes. – Notwithstanding the requirements of subsections (c), (f), and (g) of this section, a custodial law enforcement agency shall disclose or release a recording to a district attorney (i) for review of potential criminal charges, (ii) in order to comply with discovery requirements in a criminal prosecution, (iii) for use in criminal proceedings in district court, or (iv) any other law enforcement purpose, and may disclose or release a recording for any of the following purposes:

- (1) For law enforcement training purposes.
- (2) Within the custodial law enforcement agency for any administrative, training, or law enforcement purpose.
- (3) To another law enforcement agency for law enforcement purposes.

(i) Retention of Recordings. – Any recording subject to the provisions of this section shall be retained for at least the period of time required by the applicable records retention and disposition schedule developed by the Department of Natural and Cultural Resources, Division of Archives and Records.

(j) Agency Policy Required. – Each law enforcement agency that uses body-worn cameras or dashboard cameras shall adopt a policy applicable to the use of those cameras.

(k) No civil liability shall arise from compliance with the provisions of this section, provided that the acts or omissions are made in good faith and do not constitute gross negligence, willful or wanton misconduct, or intentional wrongdoing.

(l) Fee for Copies. – A law enforcement agency may charge a fee to offset the cost incurred by it to make a copy of a recording for release. The fee shall not exceed the actual cost of making the copy.

(m) Attorneys' Fees. – The court may not award attorneys' fees to any party in any action brought pursuant to this section. (2016-88, s. 1.)

Physical Address:  
500 South Greene Street  
Greenville, North Carolina 27834

Mailing Address:  
Post Office Box 7207  
Greenville, North Carolina 27835-7207



For Internal Use Only:	
Report No.:	

Telephone: (252) 329-4333  
Facsimile: (252) 329-4792

Mark R. Holtzman, Chief of Police  
[mholtzman@greenvillenc.gov](mailto:mholtzman@greenvillenc.gov)

## GREENVILLE POLICE DEPARTMENT

### Request for Disclosure of Recording Pursuant to N.C.G.S. § 132-1.4A

PLEASE NOTE:

Pursuant to N.C.G.S. § 132-1.4A(a)(4), "disclosure" means to make a recording available for viewing or listening to by the person requesting disclosure, at a time and location chosen by the Greenville Police Department, the custodial law enforcement agency. The term "disclosure" does not include the release ("to provide a copy") of a recording.

#### Person Requesting Disclosure of Recording—Requestor's Information

Name: \_\_\_\_\_ Home Phone: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_ Age: \_\_\_\_\_ Cell Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Email: \_\_\_\_\_

What is the date, approximate time of the activity captured in the recording? Date: \_\_\_\_\_ Approximate Time: \_\_\_\_\_ ☐ a.m. ☐ p.m.

Report, Citation, or Arrest Number (if known): \_\_\_\_\_

Describe any other information identifying the activity captured in the recording or otherwise describing the event:  
\_\_\_\_\_  
\_\_\_\_\_

Type of Recording (check all that apply): ☐ Body-worn camera ☐ Dashboard camera ☐ Other Recording

PLEASE NOTE:

Recordings are not public records as defined by N.C.G.S. § 132-1 and are not personnel records as defined in Part 7 of Chapter 126 of the General Statutes, N.C.G.S. § 160A-168, or N.C.G.S. § 153A-98. Recordings do not include any video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses. N.C.G.S. §§ 132-1.4A(a)(6) and (b).

As the Requestor, I am (please check all that apply):

- ☐ (1) A person whose image or voice is in the recording.
- ☐ (2) A personal representative (☐ a parent, ☐ court-appointed guardian, ☐ spouse, or ☐ attorney) of an adult person whose image or voice is in the recording, and the adult person has consented to the disclosure.

*(A copy of the legal documentation establishing your authority to make this request and written consent must be included with this request.)*

**Provide below the name, address, and telephone number of the adult person whose image or voice is in the recording:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- ☐ (3) A personal representative (☐ a parent, ☐ court-appointed guardian, ☐ spouse, or ☐ attorney) of a minor or of an adult person under lawful guardianship whose image or voice is in the recording.

*(A copy of the legal documentation establishing your authority to make this request must be included with this request.)*

Provide below the name, address, and age of the minor or adult person under lawful guardianship whose image or voice is in the recording:

- ☐ (4) A personal representative (☐ the personal representative of the estate of the deceased person; ☐ the deceased person's surviving spouse, ☐ the deceased person's parent, ☐ the deceased person's adult child; ☐ the deceased person's attorney; or ☐ the parent or ☐ the guardian of a surviving minor child) of a deceased person whose image or voice is in the recording.

(A copy of the legal documentation establishing your authority to make this request must be included with this request.)

Provide below the name, address, and date of death of the deceased person whose image or voice is in the recording:

- ☐ (5) A personal representative (☐ a parent, ☐ court-appointed guardian, ☐ spouse, or ☐ attorney) of an adult person who is incapacitated and unable to provide consent to disclosure.

(A copy of the legal documentation establishing your authority to make this request must be included with this request.)

Provide below the name, address, and current location of the adult person whose image or voice is in the recording and who is alleged to be incapacitated and unable to provide consent (please also specify why you contend the adult person is incapacitated and unable to provide consent to disclosure):

PLEASE NOTE:

Upon receipt of the written request for disclosure, as promptly as possible, the Greenville Police Department must either disclose the portion of the recording relevant to the person's request or notify the requestor of the Greenville Police Department's decision not to disclose the recording to the requestor. N.C.G.S. § 132-1.4A(d). When disclosing the recording, the Greenville Police Department shall disclose only those portions of the recording that are relevant to the person's request. A person who receives disclosure pursuant to N.C.G.S. § 132-1.4A(c) shall not record or copy the recording. If the Greenville Police Department denies disclosure pursuant to subsection N.C.G.S. § 132-1.4A(d), or has failed to provide disclosure more than three (3) business days after the request for disclosure, the person seeking disclosure may apply to the superior court in any county where any portion of the recording was made for a review of the denial of disclosure.

I have read and understand this document.

Signature: \_\_\_\_\_ Date of Request: \_\_\_\_\_

Printed Name: \_\_\_\_\_

**FOR INTERNAL USE ONLY**

Received By: \_\_\_\_\_ Date of Receipt: \_\_\_\_\_

Time of Receipt: \_\_\_\_\_ ☐ a.m. ☐ p.m.

NOTES: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## File No.

County

## Name Of Petitioner

Address

City, State, Zip

Phone No.

Fax No.

Email Address

☐ G.S. 132-1.4A(g) – General  
(CVS Filing Fee Applies)

[illegible]

(Include date and approximate time of activity captured in the recording, or otherwise identify the activity with particularity sufficient to identify the recording at issue.)

I certify that a filed copy of this Petition was served on the head of the custodial law enforcement agency as follows:

☐ Personal Delivery☐ By Regular Mail, US postage prepaid, addressed as follows:

I certify that a filed copy of this Petition was served on the District Attorney as follows (only required for general release):

☐ Personal Delivery☐ By Regular Mail, US postage prepaid, addressed as follows:

Date

Petitioner's Signature

## Donald Phillips

---

**From:** Donald Phillips  
**Sent:** Monday, October 14, 2019 6:06 PM  
**To:** Ann E. Wall; Emanuel D. McGirt; Mark Holtzman  
**Cc:** Donald Phillips; Rhonda Wilkerson  
**Subject:** FW: Interim ECU Chancellor Dan Gerlach Investigation--PRLR for Custodial LEA Recording(s)  
**Attachments:** N.C.G.S. 132-1.4A.PDF; NCGS 132-1 4A - Request for Disclosure of Recording.pdf; AOC-CV-270 (04.2017).pdf

FYI

**Donald K. Phillips**  
Assistant City Attorney  
P.O. Box 7207  
Greenville, NC 27835-7207  
Tel: (252) 329-4426  
Fax: (252) 329-4626  
Email: [dkphillips@greenvillenc.gov](mailto:dkphillips@greenvillenc.gov)  
Website: [www.greenvillenc.gov](http://www.greenvillenc.gov)



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**Name of Requestor:** Mark P. Henriques, Esq.  
Womble Bond Dickinson (US) LLP  
*Attorneys for UNC System*

S. McKinley Gray, III, Esq.  
Ward and Smith, P.A.  
*Attorneys for Dan Gerlach*

**Date of Request:** 10/14/2019  
**Date of Incident:** 09/25/2019  
**GPD Officer(s):** None  
**GPD File No.:** None



Mr. Henriques and Mr. Gray:

I understand that you are interested in viewing City of Greenville, Greenville Police Department ("GPD") traffic/public safety camera recordings from September 25, 2019 regarding an investigation of Interim ECU Chancellor Dan Gerlach.

**Overview of the law regarding law enforcement recordings:** Regarding your request to view the recording(s) at issue, please find attached N.C.G.S. § 132-1.4A, which became effective October 1, 2016. In a nutshell, this law creates very specific procedures for a person who is requesting to either **view** (seek "**disclosure**") or obtain a **copy** (seek "**release**") of any custodial law enforcement agency recording (traffic/public safety camera, body worn camera, dashboard camera, or any other audio or video recording). Requests for "disclosure" of GPD recordings are handled by GPD and the Chief of Police allows or denies "disclosure." A recording can only be "released" by superior court order and only after the person seeking "release" has first "filed" a Petition for Release in superior court.

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Lieutenant Michael Montanye  
Strategic Services  
Greenville Police Department  
Email: [mmontanye@greenvillenc.gov](mailto:mmontanye@greenvillenc.gov)  
Telephone: (252) 329-4835

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**Please note that I am out of town at a CLE, but will be back in the office on Thursday.** Feel free to call me if you have any questions or would like to discuss. My direct line is (252) 329-4331. If you need to reach me before Thursday, please call my cell (252) 916-9803.

Thank you.

Donald

**Donald K. Phillips**  
Assistant City Attorney  
P.O. Box 7207  
Greenville, NC 27835-7207  
Tel: (252) 329-4426  
Fax: (252) 329-4626  
Email: [dkphillips@greenvillenc.gov](mailto:dkphillips@greenvillenc.gov)  
Website: [www.greenvillenc.gov](http://www.greenvillenc.gov)





**§ 132-1.4A. Law enforcement agency recordings.**

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- (2) Custodial law enforcement agency. – The law enforcement agency that owns or leases or whose personnel operates the equipment that created the recording at the time the recording was made.
- (3) Dashboard camera. – A device or system installed or used in a law enforcement agency vehicle that electronically records images or audio depicting interaction with others by law enforcement agency personnel. This term does not include body-worn cameras.
- (4) Disclose or disclosure. – To make a recording available for viewing or listening to by the person requesting disclosure, at a time and location chosen by the custodial law enforcement agency. This term does not include the release of a recording.
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- (6) Recording. – A visual, audio, or visual and audio recording captured by a body-worn camera, a dashboard camera, or any other video or audio recording device operated by or on behalf of a law enforcement agency or law enforcement agency personnel when carrying out law enforcement responsibilities. This term does not include any video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses.
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- (5) A personal representative of an adult person who is incapacitated and unable to provide consent to disclosure.

When disclosing the recording, the law enforcement agency shall disclose only those portions of the recording that are relevant to the person's request. A person who receives disclosure pursuant to this subsection shall not record or copy the recording.

(d) Disclosure; Factors for Consideration. – Upon receipt of the written request for disclosure, as promptly as possible, the custodial law enforcement agency must either disclose the portion of the recording relevant to the person's request or notify the requestor of the custodial law enforcement agency's decision not to disclose the recording to the requestor.

The custodial law enforcement agency may consider any of the following factors in determining if a recording is disclosed:

- (1) If the person requesting disclosure of the recording is a person authorized to receive disclosure pursuant to subsection (c) of this section.
- (2) If the recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- (3) If disclosure would reveal information regarding a person that is of a highly sensitive personal nature.
- (4) If disclosure may harm the reputation or jeopardize the safety of a person.
- (5) If disclosure would create a serious threat to the fair, impartial, and orderly administration of justice.
- (6) If confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.

(e) Appeal of Disclosure Denial. – If a law enforcement agency denies disclosure pursuant to subsection (d) of this section, or has failed to provide disclosure more than three business days after the request for disclosure, the person seeking disclosure may apply to the superior court in any county where any portion of the recording was made for a review of the denial of disclosure. The court may conduct an in-camera review of the recording. The court may order the disclosure of the recording only if the court finds that the law enforcement agency abused its discretion in denying the request for disclosure. The court may only order disclosure of those portions of the recording that are relevant to the person's request. A person who receives disclosure pursuant to this subsection shall not record or copy the recording. An order issued pursuant to this subsection may not order the release of the recording.

In any proceeding pursuant to this subsection, the following persons shall be notified and those persons, or their designated representative, shall be given an opportunity to be heard at any proceeding: (i) the head of the custodial law enforcement agency, (ii) any law enforcement agency personnel whose image or voice is in the recording and the head of that person's employing law enforcement agency, and (iii) the District Attorney. Actions brought pursuant to this subsection shall be set down for hearing as soon as practicable, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(f) Release of Recordings to Certain Persons; Expedited Process. – Notwithstanding the provisions of subsection (g) of this section, a person authorized to receive disclosure pursuant to subsection (c) of this section, or the custodial law enforcement agency, may petition the superior court in any county where any portion of the recording was made for an order releasing the recording to a person authorized to receive disclosure. There shall be no fee for filing the petition which shall be filed on a form approved by the Administrative Office of the Courts and shall state the date and approximate time of the activity captured in the recording, or otherwise identify the activity with reasonable particularity sufficient to identify the recording. If the petitioner is a person authorized to receive disclosure, notice and an opportunity to be

heard shall be given to the head of the custodial law enforcement agency. Petitions filed pursuant to this subsection shall be set down for hearing as soon as practicable and shall be accorded priority by the court.

The court shall first determine if the person to whom release of the recording is requested is a person authorized to receive disclosure pursuant to subsection (c) of this section. In making this determination, the court may conduct an in-camera review of the recording and may, in its discretion, allow the petitioner to be present to assist in identifying the image or voice in the recording that authorizes disclosure to the person to whom release is requested. If the court determines that the person is not authorized to receive disclosure pursuant to subsection (c) of this section, there shall be no right of appeal and the petitioner may file an action for release pursuant to subsection (g) of this section.

If the court determines that the person to whom release of the recording is requested is a person authorized to receive disclosure pursuant to subsection (c) of this section, the court shall consider the standards set out in subsection (g) of this section and any other standards the court deems relevant in determining whether to order the release of all or a portion of the recording. The court may conduct an in-camera review of the recording. The court shall release only those portions of the recording that are relevant to the person's request and may place any conditions or restrictions on the release of the recording that the court, in its discretion, deems appropriate.

(g) Release of Recordings; General; Court Order Required. – Recordings in the custody of a law enforcement agency shall only be released pursuant to court order. Any custodial law enforcement agency or any person requesting release of a recording may file an action in the superior court in any county where any portion of the recording was made for an order releasing the recording. The request for release must state the date and approximate time of the activity captured in the recording, or otherwise identify the activity with reasonable particularity sufficient to identify the recording to which the action refers. The court may conduct an in-camera review of the recording. In determining whether to order the release of all or a portion of the recording, in addition to any other standards the court deems relevant, the court shall consider the applicability of all of the following standards:

- (1) Release is necessary to advance a compelling public interest.
- (2) The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- (3) The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
- (4) Release would reveal information regarding a person that is of a highly sensitive personal nature.
- (5) Release may harm the reputation or jeopardize the safety of a person.
- (6) Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- (7) Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- (8) There is good cause shown to release all portions of a recording.

The court shall release only those portions of the recording that are relevant to the person's request, and may place any conditions or restrictions on the release of the recording that the court, in its discretion, deems appropriate.

In any proceeding pursuant to this subsection, the following persons shall be notified and those persons, or their designated representative, shall be given an opportunity to be heard at any proceeding: (i) the head of the custodial law enforcement agency, (ii) any law enforcement agency personnel whose image or voice is in the recording and the head of that person's employing law enforcement agency, and (iii) the District Attorney. Actions brought pursuant to

this subsection shall be set down for hearing as soon as practicable, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(h) Release of Recordings; Law Enforcement Purposes. – Notwithstanding the requirements of subsections (c), (f), and (g) of this section, a custodial law enforcement agency shall disclose or release a recording to a district attorney (i) for review of potential criminal charges, (ii) in order to comply with discovery requirements in a criminal prosecution, (iii) for use in criminal proceedings in district court, or (iv) any other law enforcement purpose, and may disclose or release a recording for any of the following purposes:

- (1) For law enforcement training purposes.
- (2) Within the custodial law enforcement agency for any administrative, training, or law enforcement purpose.
- (3) To another law enforcement agency for law enforcement purposes.

(i) Retention of Recordings. – Any recording subject to the provisions of this section shall be retained for at least the period of time required by the applicable records retention and disposition schedule developed by the Department of Natural and Cultural Resources, Division of Archives and Records.

(j) Agency Policy Required. – Each law enforcement agency that uses body-worn cameras or dashboard cameras shall adopt a policy applicable to the use of those cameras.

(k) No civil liability shall arise from compliance with the provisions of this section, provided that the acts or omissions are made in good faith and do not constitute gross negligence, willful or wanton misconduct, or intentional wrongdoing.

(l) Fee for Copies. – A law enforcement agency may charge a fee to offset the cost incurred by it to make a copy of a recording for release. The fee shall not exceed the actual cost of making the copy.

(m) Attorneys' Fees. – The court may not award attorneys' fees to any party in any action brought pursuant to this section. (2016-88, s. 1.)

Physical Address:  
500 South Greene Street  
Greenville, North Carolina 27834

Mailing Address:  
Post Office Box 7207  
Greenville, North Carolina 27835-7207



For Internal Use Only:	
Report No.:	

Telephone: (252) 329-4333  
Facsimile: (252) 329-4792

Mark R. Holtzman, Chief of Police  
[mholtzman@greenvillenc.gov](mailto:mholtzman@greenvillenc.gov)

## GREENVILLE POLICE DEPARTMENT

### Request for Disclosure of Recording Pursuant to N.C.G.S. § 132-1.4A

**PLEASE NOTE:**

Pursuant to N.C.G.S. § 132-1.4A(a)(4), "disclosure" means to make a recording available for viewing or listening to by the person requesting disclosure, at a time and location chosen by the Greenville Police Department, the custodial law enforcement agency. The term "disclosure" does not include the release ("to provide a copy") of a recording.

#### Person Requesting Disclosure of Recording—Requestor's Information

Name: \_\_\_\_\_ Home Phone: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_ Age: \_\_\_\_\_ Cell Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Email: \_\_\_\_\_

What is the date, approximate time of the activity captured in the recording? Date: \_\_\_\_\_ Approximate Time: \_\_\_\_\_ ☐ a.m. ☐ p.m.

Report, Citation, or Arrest Number (if known): \_\_\_\_\_

Describe any other information identifying the activity captured in the recording or otherwise describing the event:  
\_\_\_\_\_  
\_\_\_\_\_

Type of Recording (check all that apply): ☐ Body-worn camera ☐ Dashboard camera ☐ Other Recording

**PLEASE NOTE:**

Recordings are not public records as defined by N.C.G.S. § 132-1 and are not personnel records as defined in Part 7 of Chapter 126 of the General Statutes, N.C.G.S. § 160A-168, or N.C.G.S. § 153A-98. Recordings do not include any video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses. N.C.G.S. §§ 132-1.4A(a)(6) and (b).

As the Requestor, I am (please check all that apply):

- ☐ (1) A person whose image or voice is in the recording.
- ☐ (2) A personal representative (☐ a parent, ☐ court-appointed guardian, ☐ spouse, or ☐ attorney) of an adult person whose image or voice is in the recording, and the adult person has consented to the disclosure.

*(A copy of the legal documentation establishing your authority to make this request and written consent must be included with this request.)*

**Provide below the name, address, and telephone number of the adult person whose image or voice is in the recording:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- ☐ (3) A personal representative (☐ a parent, ☐ court-appointed guardian, ☐ spouse, or ☐ attorney) of a minor or of an adult person under lawful guardianship whose image or voice is in the recording.

*(A copy of the legal documentation establishing your authority to make this request must be included with this request.)*

Provide below the name, address, and age of the minor or adult person under lawful guardianship whose image or voice is in the recording:

- ☐ (4) A personal representative (☐ the personal representative of the estate of the deceased person; ☐ the deceased person's surviving spouse, ☐ the deceased person's parent, ☐ the deceased person's adult child; ☐ the deceased person's attorney; or ☐ the parent or ☐ the guardian of a surviving minor child) of a deceased person whose image or voice is in the recording.

(A copy of the legal documentation establishing your authority to make this request must be included with this request.)

Provide below the name, address, and date of death of the deceased person whose image or voice is in the recording:

- ☐ (5) A personal representative (☐ a parent, ☐ court-appointed guardian, ☐ spouse, or ☐ attorney) of an adult person who is incapacitated and unable to provide consent to disclosure.

(A copy of the legal documentation establishing your authority to make this request must be included with this request.)

Provide below the name, address, and current location of the adult person whose image or voice is in the recording and who is alleged to be incapacitated and unable to provide consent (please also specify why you contend the adult person is incapacitated and unable to provide consent to disclosure):

PLEASE NOTE:

Upon receipt of the written request for disclosure, as promptly as possible, the Greenville Police Department must either disclose the portion of the recording relevant to the person's request or notify the requestor of the Greenville Police Department's decision not to disclose the recording to the requestor. N.C.G.S. § 132-1.4A(d). When disclosing the recording, the Greenville Police Department shall disclose only those portions of the recording that are relevant to the person's request. A person who receives disclosure pursuant to N.C.G.S. § 132-1.4A(c) shall not record or copy the recording. If the Greenville Police Department denies disclosure pursuant to subsection N.C.G.S. § 132-1.4A(d), or has failed to provide disclosure more than three (3) business days after the request for disclosure, the person seeking disclosure may apply to the superior court in any county where any portion of the recording was made for a review of the denial of disclosure.

**I have read and understand this document.**

Signature: \_\_\_\_\_ Date of Request: \_\_\_\_\_

Printed Name: \_\_\_\_\_

**FOR INTERNAL USE ONLY**

Received By: \_\_\_\_\_ Date of Receipt: \_\_\_\_\_

Time of Receipt: \_\_\_\_\_ ☐ a.m. ☐ p.m.

NOTES: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**STATE OF NORTH CAROLINA**

File No. \_\_\_\_\_

In The General Court Of Justice  
Superior Court Division

\_\_\_\_\_ County

**IN THE MATTER OF  
CUSTODIAL LAW ENFORCEMENT AGENCY  
RECORDING SOUGHT BY:**

Name Of Petitioner \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

City, State, Zip \_\_\_\_\_

Phone No. \_\_\_\_\_

Fax No. \_\_\_\_\_

Email Address \_\_\_\_\_

**PETITION FOR RELEASE OF  
CUSTODIAL LAW ENFORCEMENT AGENCY  
RECORDING**☐ G.S. 132-1.4A(f) – Person authorized to receive disclosure  
(No Filing Fee Applies)☐ G.S. 132-1.4A(g) – General  
(CVS Filing Fee Applies)

I, the above-named petitioner, request the release of a custodial law enforcement agency recording to \_\_\_\_\_,  
state that at least some portion of the law enforcement agency recording was made in this county, and I further state the following:

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(Include date and approximate time of activity captured in the recording, or otherwise identify the activity with particularity sufficient to identify the recording at issue.)

**CERTIFICATE OF SERVICE  
ON HEAD OF CUSTODIAL LAW ENFORCEMENT AGENCY**

I certify that a filed copy of this Petition was served on the head of the custodial law enforcement agency as follows:

☐ Personal Delivery☐ By Regular Mail, US postage prepaid, addressed as follows:**CERTIFICATE OF SERVICE ON DISTRICT ATTORNEY**

I certify that a filed copy of this Petition was served on the District Attorney as follows (only required for general release):

☐ Personal Delivery☐ By Regular Mail, US postage prepaid, addressed as follows:

Date \_\_\_\_\_

Petitioner's Signature \_\_\_\_\_



## Donald Phillips

---

**From:** Donald Phillips  
**Sent:** Monday, October 14, 2019 6:06 PM  
**To:** Mike Montanye  
**Cc:** Patina Oxendine; Rhonda Wilkerson; April Alligood; Donald Phillips  
**Subject:** FW: Interim ECU Chancellor Dan Gerlach Investigation--PRLR for Custodial LEA Recording(s)  
**Attachments:** N.C.G.S. 132-1.4A.PDF; NCGS 132-1 4A - Request for Disclosure of Recording.pdf; AOC-CV-270 (04.2017).pdf

FYI

**Donald K. Phillips**  
Assistant City Attorney  
P.O. Box 7207  
Greenville, NC 27835-7207  
Tel: (252) 329-4426  
Fax: (252) 329-4626  
Email: [dkphillips@greenvillenc.gov](mailto:dkphillips@greenvillenc.gov)  
Website: [www.greenvillenc.gov](http://www.greenvillenc.gov)



**From:** Donald Phillips  
**Sent:** Monday, October 14, 2019 6:04 PM  
**To:** mark.henriques@wbd-us.com; smg@wardandsmith.com  
**Cc:** Donald Phillips <DKPhillips@greenvillenc.gov>  
**Subject:** Interim ECU Chancellor Dan Gerlach Investigation--PRLR for Custodial LEA Recording(s)

### PUBLIC RECORDS REQUEST FOR CUSTODIAL LAW ENFORCEMENT AGENCY RECORDING

**Name of Requestor:** Mark P. Henriques, Esq.  
Womble Bond Dickinson (US) LLP  
*Attorneys for UNC System*

S. McKinley Gray, III, Esq.  
Ward and Smith, P.A.  
*Attorneys for Dan Gerlach*

**Date of Request:** 10/14/2019  
**Date of Incident:** 09/25/2019  
**GPD Officer(s):** None  
**GPD File No.:** None

Mr. Henriques and Mr. Gray:

I understand that you are interested in viewing City of Greenville, Greenville Police Department ("GPD") traffic/public safety camera recordings from September 25, 2019 regarding an investigation of Interim ECU Chancellor Dan Gerlach.

**Overview of the law regarding law enforcement recordings:** Regarding your request to view the recording(s) at issue, please find attached N.C.G.S. § 132-1.4A, which became effective October 1, 2016. In a nutshell, this law creates very specific procedures for a person who is requesting to either view (seek "disclosure") or obtain a copy (seek "release") of any custodial law enforcement agency recording (traffic/public safety camera, body worn camera, dashboard camera, or any other audio or video recording). Requests for "disclosure" of GPD recordings are handled by GPD and the Chief of Police allows or denies "disclosure." A recording can only be "released" by superior court order and only after the person seeking "release" has first "filed" a Petition for Release in superior court.

**If you want to VIEW the GPD recording(s):** I have attached the GPD *Request for Disclosure of Recording Form*. Each of you will need to complete this form to determine your eligibility to view the portions of the requested recordings. Please then contact Lt. Michael Montanye regarding specific questions and scheduling of those recordings that are applicable to your request for disclosure. Here is Lt. Montanye's contact information:

Lieutenant Michael Montanye  
Strategic Services  
Greenville Police Department  
Email: [mmontanye@greenvillenc.gov](mailto:mmontanye@greenvillenc.gov)  
Telephone: (252) 329-4835

**If you want to RECEIVE A COPY of the GPD recording(s):** For your convenience, I have attached the *Petition for Release of Custodial Law Enforcement Agency Recording Form* (AOC-CV-270). Please complete this form and file this form with the Pitt County Clerk of Superior Court. You will also need to calendar the matter for hearing with the Clerk of Superior Court and the Superior Court Trial Court Coordinator. You will need to properly give notice to all parties as required by the statute. As the attorney that will be handling the matter for the City, I would respectfully request to be copied as well on all documents you file. **If you decide to file a Petition, please give me a call before you file the Petition so that we can discuss the filing and logistics in greater detail.**

**Please note that I am out of town at a CLE, but will be back in the office on Thursday.** Feel free to call me if you have any questions or would like to discuss. My direct line is (252) 329-4331. If you need to reach me before Thursday, please call my cell (252) 916-9803.

Thank you.

Donald

**Donald K. Phillips**  
Assistant City Attorney  
P.O. Box 7207  
Greenville, NC 27835-7207  
Tel: (252) 329-4426  
Fax: (252) 329-4626  
Email: [dkphillips@greenvillenc.gov](mailto:dkphillips@greenvillenc.gov)  
Website: [www.greenvillenc.gov](http://www.greenvillenc.gov)



**§ 132-1.4A. Law enforcement agency recordings.**

(a) Definitions. – The following definitions apply in this section:

- (1) Body-worn camera. – An operational video or digital camera or other electronic device, including a microphone or other mechanism for allowing audio capture, affixed to the uniform or person of law enforcement agency personnel and positioned in a way that allows the camera or device to capture interactions the law enforcement agency personnel has with others.
- (2) Custodial law enforcement agency. – The law enforcement agency that owns or leases or whose personnel operates the equipment that created the recording at the time the recording was made.
- (3) Dashboard camera. – A device or system installed or used in a law enforcement agency vehicle that electronically records images or audio depicting interaction with others by law enforcement agency personnel. This term does not include body-worn cameras.
- (4) Disclose or disclosure. – To make a recording available for viewing or listening to by the person requesting disclosure, at a time and location chosen by the custodial law enforcement agency. This term does not include the release of a recording.
- (5) Personal representative. – A parent, court-appointed guardian, spouse, or attorney of a person whose image or voice is in the recording. If a person whose image or voice is in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person's surviving spouse, parent, or adult child; the deceased person's attorney; or the parent or guardian of a surviving minor child of the deceased.
- (6) Recording. – A visual, audio, or visual and audio recording captured by a body-worn camera, a dashboard camera, or any other video or audio recording device operated by or on behalf of a law enforcement agency or law enforcement agency personnel when carrying out law enforcement responsibilities. This term does not include any video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses.
- (7) Release. – To provide a copy of a recording.

(b) Public Record and Personnel Record Classification. – Recordings are not public records as defined by G.S. 132-1. Recordings are not personnel records as defined in Part 7 of Chapter 126 of the General Statutes, G.S. 160A-168, or G.S. 153A-98.

(c) Disclosure; General. – Recordings in the custody of a law enforcement agency shall be disclosed only as provided by this section. A person requesting disclosure of a recording must make a written request to the head of the custodial law enforcement agency that states the date and approximate time of the activity captured in the recording or otherwise identifies the activity with reasonable particularity sufficient to identify the recording to which the request refers.

The head of the custodial law enforcement agency may only disclose a recording to the following:

- (1) A person whose image or voice is in the recording.
- (2) A personal representative of an adult person whose image or voice is in the recording, if the adult person has consented to the disclosure.
- (3) A personal representative of a minor or of an adult person under lawful guardianship whose image or voice is in the recording.

- (4) A personal representative of a deceased person whose image or voice is in the recording.
- (5) A personal representative of an adult person who is incapacitated and unable to provide consent to disclosure.

When disclosing the recording, the law enforcement agency shall disclose only those portions of the recording that are relevant to the person's request. A person who receives disclosure pursuant to this subsection shall not record or copy the recording.

(d) Disclosure; Factors for Consideration. – Upon receipt of the written request for disclosure, as promptly as possible, the custodial law enforcement agency must either disclose the portion of the recording relevant to the person's request or notify the requestor of the custodial law enforcement agency's decision not to disclose the recording to the requestor.

The custodial law enforcement agency may consider any of the following factors in determining if a recording is disclosed:

- (1) If the person requesting disclosure of the recording is a person authorized to receive disclosure pursuant to subsection (c) of this section.
- (2) If the recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- (3) If disclosure would reveal information regarding a person that is of a highly sensitive personal nature.
- (4) If disclosure may harm the reputation or jeopardize the safety of a person.
- (5) If disclosure would create a serious threat to the fair, impartial, and orderly administration of justice.
- (6) If confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.

(e) Appeal of Disclosure Denial. – If a law enforcement agency denies disclosure pursuant to subsection (d) of this section, or has failed to provide disclosure more than three business days after the request for disclosure, the person seeking disclosure may apply to the superior court in any county where any portion of the recording was made for a review of the denial of disclosure. The court may conduct an in-camera review of the recording. The court may order the disclosure of the recording only if the court finds that the law enforcement agency abused its discretion in denying the request for disclosure. The court may only order disclosure of those portions of the recording that are relevant to the person's request. A person who receives disclosure pursuant to this subsection shall not record or copy the recording. An order issued pursuant to this subsection may not order the release of the recording.

In any proceeding pursuant to this subsection, the following persons shall be notified and those persons, or their designated representative, shall be given an opportunity to be heard at any proceeding: (i) the head of the custodial law enforcement agency, (ii) any law enforcement agency personnel whose image or voice is in the recording and the head of that person's employing law enforcement agency, and (iii) the District Attorney. Actions brought pursuant to this subsection shall be set down for hearing as soon as practicable, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(f) Release of Recordings to Certain Persons; Expedited Process. – Notwithstanding the provisions of subsection (g) of this section, a person authorized to receive disclosure pursuant to subsection (c) of this section, or the custodial law enforcement agency, may petition the superior court in any county where any portion of the recording was made for an order releasing the recording to a person authorized to receive disclosure. There shall be no fee for filing the petition which shall be filed on a form approved by the Administrative Office of the Courts and shall state the date and approximate time of the activity captured in the recording, or otherwise identify the activity with reasonable particularity sufficient to identify the recording. If the petitioner is a person authorized to receive disclosure, notice and an opportunity to be



heard shall be given to the head of the custodial law enforcement agency. Petitions filed pursuant to this subsection shall be set down for hearing as soon as practicable and shall be accorded priority by the court.

The court shall first determine if the person to whom release of the recording is requested is a person authorized to receive disclosure pursuant to subsection (c) of this section. In making this determination, the court may conduct an in-camera review of the recording and may, in its discretion, allow the petitioner to be present to assist in identifying the image or voice in the recording that authorizes disclosure to the person to whom release is requested. If the court determines that the person is not authorized to receive disclosure pursuant to subsection (c) of this section, there shall be no right of appeal and the petitioner may file an action for release pursuant to subsection (g) of this section.

If the court determines that the person to whom release of the recording is requested is a person authorized to receive disclosure pursuant to subsection (c) of this section, the court shall consider the standards set out in subsection (g) of this section and any other standards the court deems relevant in determining whether to order the release of all or a portion of the recording. The court may conduct an in-camera review of the recording. The court shall release only those portions of the recording that are relevant to the person's request and may place any conditions or restrictions on the release of the recording that the court, in its discretion, deems appropriate.

(g) Release of Recordings; General; Court Order Required. – Recordings in the custody of a law enforcement agency shall only be released pursuant to court order. Any custodial law enforcement agency or any person requesting release of a recording may file an action in the superior court in any county where any portion of the recording was made for an order releasing the recording. The request for release must state the date and approximate time of the activity captured in the recording, or otherwise identify the activity with reasonable particularity sufficient to identify the recording to which the action refers. The court may conduct an in-camera review of the recording. In determining whether to order the release of all or a portion of the recording, in addition to any other standards the court deems relevant, the court shall consider the applicability of all of the following standards:

- (1) Release is necessary to advance a compelling public interest.
- (2) The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- (3) The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
- (4) Release would reveal information regarding a person that is of a highly sensitive personal nature.
- (5) Release may harm the reputation or jeopardize the safety of a person.
- (6) Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- (7) Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- (8) There is good cause shown to release all portions of a recording.

The court shall release only those portions of the recording that are relevant to the person's request, and may place any conditions or restrictions on the release of the recording that the court, in its discretion, deems appropriate.

In any proceeding pursuant to this subsection, the following persons shall be notified and those persons, or their designated representative, shall be given an opportunity to be heard at any proceeding: (i) the head of the custodial law enforcement agency, (ii) any law enforcement agency personnel whose image or voice is in the recording and the head of that person's employing law enforcement agency, and (iii) the District Attorney. Actions brought pursuant to

this subsection shall be set down for hearing as soon as practicable, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(h) Release of Recordings; Law Enforcement Purposes. – Notwithstanding the requirements of subsections (c), (f), and (g) of this section, a custodial law enforcement agency shall disclose or release a recording to a district attorney (i) for review of potential criminal charges, (ii) in order to comply with discovery requirements in a criminal prosecution, (iii) for use in criminal proceedings in district court, or (iv) any other law enforcement purpose, and may disclose or release a recording for any of the following purposes:

- (1) For law enforcement training purposes.
- (2) Within the custodial law enforcement agency for any administrative, training, or law enforcement purpose.
- (3) To another law enforcement agency for law enforcement purposes.

(i) Retention of Recordings. – Any recording subject to the provisions of this section shall be retained for at least the period of time required by the applicable records retention and disposition schedule developed by the Department of Natural and Cultural Resources, Division of Archives and Records.

(j) Agency Policy Required. – Each law enforcement agency that uses body-worn cameras or dashboard cameras shall adopt a policy applicable to the use of those cameras.

(k) No civil liability shall arise from compliance with the provisions of this section, provided that the acts or omissions are made in good faith and do not constitute gross negligence, willful or wanton misconduct, or intentional wrongdoing.

(l) Fee for Copies. – A law enforcement agency may charge a fee to offset the cost incurred by it to make a copy of a recording for release. The fee shall not exceed the actual cost of making the copy.

(m) Attorneys' Fees. – The court may not award attorneys' fees to any party in any action brought pursuant to this section. (2016-88, s. 1.)



Physical Address:  
500 South Greene Street  
Greenville, North Carolina 27834

Mailing Address:  
Post Office Box 7207  
Greenville, North Carolina 27835-7207



For Internal Use Only:	
Report No.:	

Telephone: (252) 329-4333  
Facsimile: (252) 329-4792

Mark R. Holtzman, Chief of Police  
[mholtzman@greenvillenc.gov](mailto:mholtzman@greenvillenc.gov)

## GREENVILLE POLICE DEPARTMENT

### Request for Disclosure of Recording Pursuant to N.C.G.S. § 132-1.4A

**PLEASE NOTE:**

Pursuant to N.C.G.S. § 132-1.4A(a)(4), "disclosure" means to make a recording available for viewing or listening to by the person requesting disclosure, at a time and location chosen by the Greenville Police Department, the custodial law enforcement agency. The term "disclosure" does not include the release ("to provide a copy") of a recording.

#### Person Requesting Disclosure of Recording—Requestor's Information

Name: \_\_\_\_\_ Home Phone: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_ Age: \_\_\_\_\_ Cell Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Email: \_\_\_\_\_

What is the date, approximate time of the activity captured in the recording? Date: \_\_\_\_\_ Approximate Time: \_\_\_\_\_ ☐ a.m. ☐ p.m.

Report, Citation, or Arrest Number (if known): \_\_\_\_\_

Describe any other information identifying the activity captured in the recording or otherwise describing the event:  
\_\_\_\_\_  
\_\_\_\_\_

Type of Recording (check all that apply): ☐ Body-worn camera ☐ Dashboard camera ☐ Other Recording

**PLEASE NOTE:**

Recordings are not public records as defined by N.C.G.S. § 132-1 and are not personnel records as defined in Part 7 of Chapter 126 of the General Statutes, N.C.G.S. § 160A-168, or N.C.G.S. § 153A-98. Recordings do not include any video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses. N.C.G.S. §§ 132-1.4A(a)(6) and (b).

As the Requestor, I am (please check all that apply):

- ☐ (1) A person whose image or voice is in the recording.
- ☐ (2) A personal representative (☐ a parent, ☐ court-appointed guardian, ☐ spouse, or ☐ attorney) of an adult person whose image or voice is in the recording, and the adult person has consented to the disclosure.

*(A copy of the legal documentation establishing your authority to make this request and written consent must be included with this request.)*

**Provide below the name, address, and telephone number of the adult person whose image or voice is in the recording:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- ☐ (3) A personal representative (☐ a parent, ☐ court-appointed guardian, ☐ spouse, or ☐ attorney) of a minor or of an adult person under lawful guardianship whose image or voice is in the recording.  
*(A copy of the legal documentation establishing your authority to make this request must be included with this request.)*

Provide below the name, address, and age of the minor or adult person under lawful guardianship whose image or voice is in the recording:

- ☐ (4) A personal representative (☐ the personal representative of the estate of the deceased person; ☐ the deceased person's surviving spouse, ☐ the deceased person's parent, ☐ the deceased person's adult child; ☐ the deceased person's attorney; or ☐ the parent or ☐ the guardian of a surviving minor child) of a deceased person whose image or voice is in the recording.

(A copy of the legal documentation establishing your authority to make this request must be included with this request.)

Provide below the name, address, and date of death of the deceased person whose image or voice is in the recording:

- ☐ (5) A personal representative (☐ a parent, ☐ court-appointed guardian, ☐ spouse, or ☐ attorney) of an adult person who is incapacitated and unable to provide consent to disclosure.

(A copy of the legal documentation establishing your authority to make this request must be included with this request.)

Provide below the name, address, and current location of the adult person whose image or voice is in the recording and who is alleged to be incapacitated and unable to provide consent (please also specify why you contend the adult person is incapacitated and unable to provide consent to disclosure):

PLEASE NOTE:

Upon receipt of the written request for disclosure, as promptly as possible, the Greenville Police Department must either disclose the portion of the recording relevant to the person's request or notify the requestor of the Greenville Police Department's decision not to disclose the recording to the requestor. N.C.G.S. § 132-1.4A(d). When disclosing the recording, the Greenville Police Department shall disclose only those portions of the recording that are relevant to the person's request. A person who receives disclosure pursuant to N.C.G.S. § 132-1.4A(c) shall not record or copy the recording. If the Greenville Police Department denies disclosure pursuant to subsection N.C.G.S. § 132-1.4A(d), or has failed to provide disclosure more than three (3) business days after the request for disclosure, the person seeking disclosure may apply to the superior court in any county where any portion of the recording was made for a review of the denial of disclosure.

**I have read and understand this document.**

Signature: \_\_\_\_\_ Date of Request: \_\_\_\_\_

Printed Name: \_\_\_\_\_

**FOR INTERNAL USE ONLY**

Received By: \_\_\_\_\_ Date of Receipt: \_\_\_\_\_

Time of Receipt: \_\_\_\_\_ ☐ a.m. ☐ p.m.

NOTES:

**STATE OF NORTH CAROLINA**

File No. \_\_\_\_\_

In The General Court Of Justice  
Superior Court Division

\_\_\_\_ County

**IN THE MATTER OF  
CUSTODIAL LAW ENFORCEMENT AGENCY  
RECORDING SOUGHT BY:**

Name Of Petitioner \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

City, State, Zip \_\_\_\_\_

Phone No. \_\_\_\_\_

Fax No. \_\_\_\_\_

Email Address \_\_\_\_\_

**PETITION FOR RELEASE OF  
CUSTODIAL LAW ENFORCEMENT AGENCY  
RECORDING**☐ G.S. 132-1.4A(f) – Person authorized to receive disclosure  
(No Filing Fee Applies)☐ G.S. 132-1.4A(g) – General  
(CVS Filing Fee Applies)

I, the above-named petitioner, request the release of a custodial law enforcement agency recording to \_\_\_\_\_,  
state that at least some portion of the law enforcement agency recording was made in this county, and I further state the following:

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(Include date and approximate time of activity captured in the recording, or otherwise identify the activity with particularity sufficient to identify the recording at issue.)

**CERTIFICATE OF SERVICE  
ON HEAD OF CUSTODIAL LAW ENFORCEMENT AGENCY**

I certify that a filed copy of this Petition was served on the head of the custodial law enforcement agency as follows:

☐ Personal Delivery☐ By Regular Mail, US postage prepaid, addressed as follows:**CERTIFICATE OF SERVICE ON DISTRICT ATTORNEY**

I certify that a filed copy of this Petition was served on the District Attorney as follows (only required for general release):

☐ Personal Delivery☐ By Regular Mail, US postage prepaid, addressed as follows:

Date \_\_\_\_\_

Petitioner's Signature \_\_\_\_\_

## Donald Phillips

---

**From:** Rhonda Wilkerson <Rhonda.Wilkerson@AAM.COGNC.NET>  
**Sent:** Tuesday, October 15, 2019 12:11 PM  
**To:** Donald Phillips  
**Subject:** Voice Message from Rhonda Wilkerson (4426)  
**Attachments:** Audio\_Recording\_S1-201901\_001\_compand.wav

## Donald Phillips

---

**From:** Peter Romary <peter.romary@qverity.com>  
**Sent:** Tuesday, October 15, 2019 12:38 PM  
**To:** Donald Phillips  
**Subject:** Surveillance Video - CONFIDENTIAL REQUEST

Good Afternoon, Donald.

My name is Peter Romary, I am an attorney living most of the time in Hillsborough and also Greenville (I will be there tomorrow). I was formerly a PBA // FoP Panel Attorney and was friends with Bill Little -- I practiced law with Galen Braddy for a number of years.

I have been retained by some private parties, including a couple of members of the ECU Board of Trustees and UNC Board of Governors - this is in response to an ever changing story from Dan Gerlach and an allegation of a "set up" by him and some who support him.

The "set up" (which has been outlined online by some) states that a "Cabal" of Judges, Lawyers, BoT, BoG and former political opponents paid 2 off duty police officers to lure Gerlach from Sup Dogs to Club 519. There, so the theory goes, the officers had a "prostitute" they had picked up previously for sale of drugs, waiting to "put Gerlach in compromising positions" so that he could be photographed.

A strange story indeed and one of several changing stories told -- also very unlikely as Gerlach said the trip to Sup Dogs was a last minute / spur of the moment decision. Withholding charges in return for pay and to set someone up also sounds felonious to me. As such, my clients -- no BoT members have been named just "BoT members" along with Judges seem to be accused in this, what appears to me to be a, "fantasy".

That said, I would like to look at and view the video surveillance on the basis that my clients may be alleged at some time to be on them. I have also spoken to a Judge, friend of 25 years, and they are quite annoyed about this. So, I am writing, requesting access to or copies of GPD surveillance camera footage.

I have down the times that some witnesses have said things occurred -- Gerlach arrived at Sup Dogs between 2100-2130 on the night of Sept 25th. He left at approximately 2230-2250.

So, cameras pointed at or picking up Sup Dogs for the earlier time (as well as parking lot footage from 2100-2130). Then cameras between Sup Dogs and Club 519, including any cameras picking up along the way and showing door of 519 between 2230-2300.

Finally, cameras showing the parking lot behind and in front of Sup Dogs from 2345-0300 (25th-26th) -- I understand his latest story has him going to 2 other clubs after Club 519.

My clients asked for this after some BoT members were asked to produce their cellphones by a private law firm asked to look into this matter (so, somehow this story is being investigated).

We have unnamed Judges, lawyers, BoT, BoG and un-named political rivals from years gone by accused in this story -- Gerlach simply states he "may have been set up" which suggests that off duty officers lured him to a nightclub (not sure why the words "No thanks" were not used).

My request is not for body camera footage and is not so that anything can be displayed online. If these

allegations catch hold there is a likelihood that my clients (who for now wish to preserve anonymity because of national press interest) may have to show they were NOT there. Further, there is a public interest in showing that NO police officers were involved in any way, NO judges were involved in any way and that NO conspiracy existed -- I would have hoped that Mr. Gerlach's ever changing story and the fact that the first pictures posted online were videos taken by students, would have ended this.

I know Mike Montanye, whose department these video files are kept in. I will be in Greenville tomorrow and, with your permission pursuant to the General Statutes permitting release of videos (albeit body camera) I would very much like to get the videos and clear this up. In essence allegations have been made suggesting people are on these videos -- no allegation has yet been made that BoT or BoG members were present BUT it would not take much for someone to suggest they were, alleging that they wanted to see "a plan in action" -- we contend that this is nonsense BUT, rather than relying on videos that may be purged, I would rather have said video and review it to refute any such allegation that comes along.

Further, I would like, pro bono, as I did many times before, to assist and protect officers from baseless allegations made by people whom, I contend, are lying to cover up drunken foolishness that may or may not have involved a sex act and / or assault on a female.

Thank you for your time and assistance -- as I say, I will be down in Greenville tomorrow and, with your permission, could arrange to get these from Mike.

Very best wishes,

Peter

--

Peter Romary  
Partner and General Counsel, QVerity  
Managing Partner, QVerity Legal

## Donald Phillips

---

**From:** Mike Montanye <Mike.Montanye@AAM.COGNC.NET>  
**Sent:** Tuesday, October 15, 2019 2:04 PM  
**To:** Donald Phillips  
**Subject:** Voice Message from Mike Montanye (3215)  
**Attachments:** Audio\_Recording\_S1-202255\_001\_compand.wav



## Donald Phillips

---

**From:** Donald Phillips  
**Sent:** Tuesday, October 15, 2019 4:50 PM  
**To:** Peter Romary  
**Cc:** Donald Phillips  
**Subject:** Interim ECU Chancellor Dan Gerlach Investigation--PRLR for Custodial LEA Recording(s)  
**Attachments:** N.C.G.S. 132-1.4A.PDF; NCGS 132-1 4A - Request for Disclosure of Recording.pdf; AOC-CV-270 (04.2017).pdf

### **PUBLIC RECORDS REQUEST FOR CUSTODIAL LAW ENFORCEMENT AGENCY RECORDING**

**Name of Requestor:** Peter Romary, Esq.  
Partner and General Counsel, QVerity  
Managing Partner, QVerity Legal  
**Date of Request:** 10/15/2019  
**Date of Incident:** 09/25/2019  
**GPD Officer(s):** None  
**GPD File No.:** None

Mr. Romary:

I understand that you are interested in viewing City of Greenville, Greenville Police Department ("GPD") traffic/public safety camera recordings from September 25, 2019 regarding an investigation of Interim ECU Chancellor Dan Gerlach.

**Overview of the law regarding law enforcement recordings:** Regarding your request to view the recording(s) at issue, please find attached N.C.G.S. § 132-1.4A, which became effective October 1, 2016. In a nutshell, this law creates very specific procedures for a person who is requesting to either **view** (seek "**disclosure**") or obtain a **copy** (seek "**release**") of any custodial law enforcement agency recording (traffic/public safety camera, body worn camera, dashboard camera, or any other audio or video recording). Requests for "disclosure" of GPD recordings are handled by GPD and the Chief of Police allows or denies "disclosure." A recording can only be "released" by superior court order and only after the person seeking "release" has first "filed" a Petition for Release in superior court.

**If you want to VIEW the GPD recording(s):** I have attached the GPD *Request for Disclosure of Recording Form*. You will need to complete this form to determine your eligibility to view the portions of the requested recordings. Please then contact Lt. Michael Montanye regarding specific questions and scheduling of those recordings that are applicable to your request for disclosure. Here is Lt. Montanye's contact information:

Lieutenant Michael Montanye  
Strategic Services  
Greenville Police Department  
Email: [mmontanye@greenvillenc.gov](mailto:mmontanye@greenvillenc.gov)  
Telephone: (252) 329-4835

**If you want to RECEIVE A COPY of the GPD recording(s):** For your convenience, I have attached the *Petition for Release of Custodial Law Enforcement Agency Recording Form* (AOC-CV-270). Please

complete this form and file this form with the Pitt County Clerk of Superior Court. You will also need to calendar the matter for hearing with the Clerk of Superior Court and the Superior Court Trial Court Coordinator. You will need to properly give notice to all parties as required by the statute. As the attorney that will be handling the matter for the City, I would respectfully request to be copied as well on all documents you file. **If you decide to file a Petition, please give me a call before you file the Petition so that we can discuss the filing and logistics in greater detail.**

**Please note that I am out of town at a CLE, but will be back in the office on Thursday.** Feel free to call me if you have any questions or would like to discuss. My direct line is (252) 329-4331. If you need to reach me before Thursday, please call my cell (252) 916-9803.

Thank you.

Donald

**Donald K. Phillips**

Assistant City Attorney

P.O. Box 7207

Greenville, NC 27835-7207

Tel: (252) 329-4426

Fax: (252) 329-4626

Email: [dkphillips@greenvillenc.gov](mailto:dkphillips@greenvillenc.gov)

Website: [www.greenvillenc.gov](http://www.greenvillenc.gov)



**From:** Peter Romary <peter.romary@qverity.com>  
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I know Mike Montanye, whose department these video files are kept in. I will be in Greenville tomorrow and, with your permission pursuant to the General Statutes permitting release of videos (albeit body camera) I would very much like to get the videos and clear this up. In essence allegations have been made suggesting people are on these videos -- no allegation has yet been made that BoT or BoG members were present BUT it would not take much for someone to suggest they were, alleging that they wanted to see "a plan in action" -- we contend that this is nonsense BUT, rather than relying on videos that may be purged, I would rather have said video and review it to refute any such allegation that comes along.

Further, I would like, pro bono, as I did many times before, to assist and protect officers from baseless allegations made by people whom, I contend, are lying to cover up drunken foolishness that may or may not have involved a sex act and / or assault on a female.

Thank you for your time and assistance -- as I say, I will be down in Greenville tomorrow and, with your permission, could arrange to get these from Mike.

Very best wishes,

Peter

--

Peter Romary  
Partner and General Counsel, QVerity  
Managing Partner, QVerity Legal

**§ 132-1.4A. Law enforcement agency recordings.**

(a) Definitions. – The following definitions apply in this section:

- (1) Body-worn camera. – An operational video or digital camera or other electronic device, including a microphone or other mechanism for allowing audio capture, affixed to the uniform or person of law enforcement agency personnel and positioned in a way that allows the camera or device to capture interactions the law enforcement agency personnel has with others.
- (2) Custodial law enforcement agency. – The law enforcement agency that owns or leases or whose personnel operates the equipment that created the recording at the time the recording was made.
- (3) Dashboard camera. – A device or system installed or used in a law enforcement agency vehicle that electronically records images or audio depicting interaction with others by law enforcement agency personnel. This term does not include body-worn cameras.
- (4) Disclose or disclosure. – To make a recording available for viewing or listening to by the person requesting disclosure, at a time and location chosen by the custodial law enforcement agency. This term does not include the release of a recording.
- (5) Personal representative. – A parent, court-appointed guardian, spouse, or attorney of a person whose image or voice is in the recording. If a person whose image or voice is in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person's surviving spouse, parent, or adult child; the deceased person's attorney; or the parent or guardian of a surviving minor child of the deceased.
- (6) Recording. – A visual, audio, or visual and audio recording captured by a body-worn camera, a dashboard camera, or any other video or audio recording device operated by or on behalf of a law enforcement agency or law enforcement agency personnel when carrying out law enforcement responsibilities. This term does not include any video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses.
- (7) Release. – To provide a copy of a recording.

(b) Public Record and Personnel Record Classification. – Recordings are not public records as defined by G.S. 132-1. Recordings are not personnel records as defined in Part 7 of Chapter 126 of the General Statutes, G.S. 160A-168, or G.S. 153A-98.

(c) Disclosure; General. – Recordings in the custody of a law enforcement agency shall be disclosed only as provided by this section. A person requesting disclosure of a recording must make a written request to the head of the custodial law enforcement agency that states the date and approximate time of the activity captured in the recording or otherwise identifies the activity with reasonable particularity sufficient to identify the recording to which the request refers.

The head of the custodial law enforcement agency may only disclose a recording to the following:

- (1) A person whose image or voice is in the recording.
- (2) A personal representative of an adult person whose image or voice is in the recording, if the adult person has consented to the disclosure.
- (3) A personal representative of a minor or of an adult person under lawful guardianship whose image or voice is in the recording.



- (4) A personal representative of a deceased person whose image or voice is in the recording.
- (5) A personal representative of an adult person who is incapacitated and unable to provide consent to disclosure.

When disclosing the recording, the law enforcement agency shall disclose only those portions of the recording that are relevant to the person's request. A person who receives disclosure pursuant to this subsection shall not record or copy the recording.

(d) Disclosure; Factors for Consideration. – Upon receipt of the written request for disclosure, as promptly as possible, the custodial law enforcement agency must either disclose the portion of the recording relevant to the person's request or notify the requestor of the custodial law enforcement agency's decision not to disclose the recording to the requestor.

The custodial law enforcement agency may consider any of the following factors in determining if a recording is disclosed:

- (1) If the person requesting disclosure of the recording is a person authorized to receive disclosure pursuant to subsection (c) of this section.
- (2) If the recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- (3) If disclosure would reveal information regarding a person that is of a highly sensitive personal nature.
- (4) If disclosure may harm the reputation or jeopardize the safety of a person.
- (5) If disclosure would create a serious threat to the fair, impartial, and orderly administration of justice.
- (6) If confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.

(e) Appeal of Disclosure Denial. – If a law enforcement agency denies disclosure pursuant to subsection (d) of this section, or has failed to provide disclosure more than three business days after the request for disclosure, the person seeking disclosure may apply to the superior court in any county where any portion of the recording was made for a review of the denial of disclosure. The court may conduct an in-camera review of the recording. The court may order the disclosure of the recording only if the court finds that the law enforcement agency abused its discretion in denying the request for disclosure. The court may only order disclosure of those portions of the recording that are relevant to the person's request. A person who receives disclosure pursuant to this subsection shall not record or copy the recording. An order issued pursuant to this subsection may not order the release of the recording.

In any proceeding pursuant to this subsection, the following persons shall be notified and those persons, or their designated representative, shall be given an opportunity to be heard at any proceeding: (i) the head of the custodial law enforcement agency, (ii) any law enforcement agency personnel whose image or voice is in the recording and the head of that person's employing law enforcement agency, and (iii) the District Attorney. Actions brought pursuant to this subsection shall be set down for hearing as soon as practicable, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(f) Release of Recordings to Certain Persons; Expedited Process. – Notwithstanding the provisions of subsection (g) of this section, a person authorized to receive disclosure pursuant to subsection (c) of this section, or the custodial law enforcement agency, may petition the superior court in any county where any portion of the recording was made for an order releasing the recording to a person authorized to receive disclosure. There shall be no fee for filing the petition which shall be filed on a form approved by the Administrative Office of the Courts and shall state the date and approximate time of the activity captured in the recording, or otherwise identify the activity with reasonable particularity sufficient to identify the recording. If the petitioner is a person authorized to receive disclosure, notice and an opportunity to be

heard shall be given to the head of the custodial law enforcement agency. Petitions filed pursuant to this subsection shall be set down for hearing as soon as practicable and shall be accorded priority by the court.

The court shall first determine if the person to whom release of the recording is requested is a person authorized to receive disclosure pursuant to subsection (c) of this section. In making this determination, the court may conduct an in-camera review of the recording and may, in its discretion, allow the petitioner to be present to assist in identifying the image or voice in the recording that authorizes disclosure to the person to whom release is requested. If the court determines that the person is not authorized to receive disclosure pursuant to subsection (c) of this section, there shall be no right of appeal and the petitioner may file an action for release pursuant to subsection (g) of this section.

If the court determines that the person to whom release of the recording is requested is a person authorized to receive disclosure pursuant to subsection (c) of this section, the court shall consider the standards set out in subsection (g) of this section and any other standards the court deems relevant in determining whether to order the release of all or a portion of the recording. The court may conduct an in-camera review of the recording. The court shall release only those portions of the recording that are relevant to the person's request and may place any conditions or restrictions on the release of the recording that the court, in its discretion, deems appropriate.

(g) Release of Recordings; General; Court Order Required. – Recordings in the custody of a law enforcement agency shall only be released pursuant to court order. Any custodial law enforcement agency or any person requesting release of a recording may file an action in the superior court in any county where any portion of the recording was made for an order releasing the recording. The request for release must state the date and approximate time of the activity captured in the recording, or otherwise identify the activity with reasonable particularity sufficient to identify the recording to which the action refers. The court may conduct an in-camera review of the recording. In determining whether to order the release of all or a portion of the recording, in addition to any other standards the court deems relevant, the court shall consider the applicability of all of the following standards:

- (1) Release is necessary to advance a compelling public interest.
- (2) The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- (3) The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
- (4) Release would reveal information regarding a person that is of a highly sensitive personal nature.
- (5) Release may harm the reputation or jeopardize the safety of a person.
- (6) Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- (7) Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- (8) There is good cause shown to release all portions of a recording.

The court shall release only those portions of the recording that are relevant to the person's request, and may place any conditions or restrictions on the release of the recording that the court, in its discretion, deems appropriate.

In any proceeding pursuant to this subsection, the following persons shall be notified and those persons, or their designated representative, shall be given an opportunity to be heard at any proceeding: (i) the head of the custodial law enforcement agency, (ii) any law enforcement agency personnel whose image or voice is in the recording and the head of that person's employing law enforcement agency, and (iii) the District Attorney. Actions brought pursuant to



this subsection shall be set down for hearing as soon as practicable, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(h) Release of Recordings; Law Enforcement Purposes. – Notwithstanding the requirements of subsections (c), (f), and (g) of this section, a custodial law enforcement agency shall disclose or release a recording to a district attorney (i) for review of potential criminal charges, (ii) in order to comply with discovery requirements in a criminal prosecution, (iii) for use in criminal proceedings in district court, or (iv) any other law enforcement purpose, and may disclose or release a recording for any of the following purposes:

- (1) For law enforcement training purposes.
- (2) Within the custodial law enforcement agency for any administrative, training, or law enforcement purpose.
- (3) To another law enforcement agency for law enforcement purposes.

(i) Retention of Recordings. – Any recording subject to the provisions of this section shall be retained for at least the period of time required by the applicable records retention and disposition schedule developed by the Department of Natural and Cultural Resources, Division of Archives and Records.

(j) Agency Policy Required. – Each law enforcement agency that uses body-worn cameras or dashboard cameras shall adopt a policy applicable to the use of those cameras.

(k) No civil liability shall arise from compliance with the provisions of this section, provided that the acts or omissions are made in good faith and do not constitute gross negligence, willful or wanton misconduct, or intentional wrongdoing.

(l) Fee for Copies. – A law enforcement agency may charge a fee to offset the cost incurred by it to make a copy of a recording for release. The fee shall not exceed the actual cost of making the copy.

(m) Attorneys' Fees. – The court may not award attorneys' fees to any party in any action brought pursuant to this section. (2016-88, s. 1.)

Physical Address:  
500 South Greene Street  
Greenville, North Carolina 27834

Mailing Address:  
Post Office Box 7207  
Greenville, North Carolina 27835-7207



For Internal Use Only:	
Report No.:	

Telephone: (252) 329-4333  
Facsimile: (252) 329-4792

Mark R. Holtzman, Chief of Police  
[mholtzman@greenvillenc.gov](mailto:mholtzman@greenvillenc.gov)

## GREENVILLE POLICE DEPARTMENT

### Request for Disclosure of Recording Pursuant to N.C.G.S. § 132-1.4A

**PLEASE NOTE:**

Pursuant to N.C.G.S. § 132-1.4A(a)(4), "disclosure" means to make a recording available for viewing or listening to by the person requesting disclosure, at a time and location chosen by the Greenville Police Department, the custodial law enforcement agency. The term "disclosure" does not include the release ("to provide a copy") of a recording.

#### Person Requesting Disclosure of Recording—Requestor's Information

Name: \_\_\_\_\_ Home Phone: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_ Age: \_\_\_\_\_ Cell Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Email: \_\_\_\_\_

What is the date, approximate time of the activity captured in the recording? Date: \_\_\_\_\_ Approximate Time: \_\_\_\_\_ ☐ a.m. ☐ p.m.

Report, Citation, or Arrest Number (if known): \_\_\_\_\_

Describe any other information identifying the activity captured in the recording or otherwise describing the event:  
\_\_\_\_\_  
\_\_\_\_\_

Type of Recording (check all that apply): ☐ Body-worn camera ☐ Dashboard camera ☐ Other Recording

**PLEASE NOTE:**

Recordings are not public records as defined by N.C.G.S. § 132-1 and are not personnel records as defined in Part 7 of Chapter 126 of the General Statutes, N.C.G.S. § 160A-168, or N.C.G.S. § 153A-98. Recordings do not include any video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses. N.C.G.S. §§ 132-1.4A(a)(6) and (b).

As the Requestor, I am (please check all that apply):

- ☐ (1) A person whose image or voice is in the recording.
- ☐ (2) A personal representative (☐ a parent, ☐ court-appointed guardian, ☐ spouse, or ☐ attorney) of an adult person whose image or voice is in the recording, and the adult person has consented to the disclosure.

*(A copy of the legal documentation establishing your authority to make this request and written consent must be included with this request.)*

**Provide below the name, address, and telephone number of the adult person whose image or voice is in the recording:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- ☐ (3) A personal representative (☐ a parent, ☐ court-appointed guardian, ☐ spouse, or ☐ attorney) of a minor or of an adult person under lawful guardianship whose image or voice is in the recording.  
*(A copy of the legal documentation establishing your authority to make this request must be included with this request.)*

Provide below the name, address, and age of the minor or adult person under lawful guardianship whose image or voice is in the recording:

- ☐ (4) A personal representative (☐ the personal representative of the estate of the deceased person; ☐ the deceased person's surviving spouse, ☐ the deceased person's parent, ☐ the deceased person's adult child; ☐ the deceased person's attorney; or ☐ the parent or ☐ the guardian of a surviving minor child) of a deceased person whose image or voice is in the recording.

*(A copy of the legal documentation establishing your authority to make this request must be included with this request.)*

**Provide below the name, address, and date of death of the deceased person whose image or voice is in the recording:**

- ☐ (5) A personal representative (☐ a parent, ☐ court-appointed guardian, ☐ spouse, or ☐ attorney) of an adult person who is incapacitated and unable to provide consent to disclosure.

*(A copy of the legal documentation establishing your authority to make this request must be included with this request.)*

**Provide below the name, address, and current location of the adult person whose image or voice is in the recording and who is alleged to be incapacitated and unable to provide consent (please also specify why you contend the adult person is incapacitated and unable to provide consent to disclosure):**

PLEASE NOTE:

*Upon receipt of the written request for disclosure, as promptly as possible, the Greenville Police Department must either disclose the portion of the recording relevant to the person's request or notify the requestor of the Greenville Police Department's decision not to disclose the recording to the requestor. N.C.G.S. § 132-1.4A(d). When disclosing the recording, the Greenville Police Department shall disclose only those portions of the recording that are relevant to the person's request. A person who receives disclosure pursuant to N.C.G.S. § 132-1.4A(c) shall not record or copy the recording. If the Greenville Police Department denies disclosure pursuant to subsection N.C.G.S. § 132-1.4A(d), or has failed to provide disclosure more than three (3) business days after the request for disclosure, the person seeking disclosure may apply to the superior court in any county where any portion of the recording was made for a review of the denial of disclosure.*

**I have read and understand this document.**

Signature: \_\_\_\_\_ Date of Request: \_\_\_\_\_

Printed Name: \_\_\_\_\_

**FOR INTERNAL USE ONLY**

Received By: \_\_\_\_\_ Date of Receipt: \_\_\_\_\_

Time of Receipt: \_\_\_\_\_ ☐ a.m. ☐ p.m.

NOTES:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**STATE OF NORTH CAROLINA**

File No.

In The General Court Of Justice  
Superior Court Division

County

**IN THE MATTER OF  
CUSTODIAL LAW ENFORCEMENT AGENCY  
RECORDING SOUGHT BY:**

Name Of Petitioner

Address

City, State, Zip

Phone No.

Fax No.

Email Address

**PETITION FOR RELEASE OF  
CUSTODIAL LAW ENFORCEMENT AGENCY  
RECORDING**☐ G.S. 132-1.4A(f) – Person authorized to receive disclosure  
(No Filing Fee Applies)☐ G.S. 132-1.4A(g) – General  
(CVS Filing Fee Applies)

I, the above-named petitioner, request the release of a custodial law enforcement agency recording to \_\_\_\_\_,  
state that at least some portion of the law enforcement agency recording was made in this county, and I further state the following:

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(Include date and approximate time of activity captured in the recording, or otherwise identify the activity with particularity sufficient to identify the recording at issue.)

**CERTIFICATE OF SERVICE  
ON HEAD OF CUSTODIAL LAW ENFORCEMENT AGENCY**

I certify that a filed copy of this Petition was served on the head of the custodial law enforcement agency as follows:

- ☐ Personal Delivery  
☐ By Regular Mail, US postage prepaid, addressed as follows:

**CERTIFICATE OF SERVICE ON DISTRICT ATTORNEY**

I certify that a filed copy of this Petition was served on the District Attorney as follows (only required for general release):

- ☐ Personal Delivery  
☐ By Regular Mail, US postage prepaid, addressed as follows:

Date

Petitioner's Signature

## Donald Phillips

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**From:** Donald Phillips  
**Sent:** Tuesday, October 15, 2019 4:52 PM  
**To:** Mark Holtzman; Mike Montanye; Patina Oxendine; Shari S. Groccia  
**Cc:** Donald Phillips  
**Subject:** Interim ECU Chancellor Dan Gerlach Investigation--PRLR for Custodial LEA Recording(s)  
**Attachments:** Audio\_Recording\_S1-201901\_001\_comand.wav

Voicemail from Attorney Peter Romary.

Donald

**Donald K. Phillips**  
Assistant City Attorney  
P.O. Box 7207  
Greenville, NC 27835-7207  
Tel: (252) 329-4426  
Fax: (252) 329-4626  
Email: [dkphillips@greenvillenc.gov](mailto:dkphillips@greenvillenc.gov)  
Website: [www.greenvillenc.gov](http://www.greenvillenc.gov)



*Find yourself in good company\**

**From:** Rhonda Wilkerson <[Rhonda.Wilkerson@AAM.COGNC.NET](mailto:Rhonda.Wilkerson@AAM.COGNC.NET)>  
**Sent:** Tuesday, October 15, 2019 12:11 PM  
**To:** Donald Phillips <[Donald.Phillips@AAM.COGNC.NET](mailto:Donald.Phillips@AAM.COGNC.NET)>  
**Subject:** Voice Message from Rhonda Wilkerson (4426)